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28 March 1984

MEMORANDUM FOR: Director of Central Intelligence

FROM: SA/DCI/IA

SUBJECT: NSC Meeting on Our Draft CW Treaty, 29 March 1984

1. You are scheduled to attend a National Security Council meeting on Thursday, 29 March, at 10:00 a.m. in the Cabinet Room. This will be a principal plus one session. The meeting is intended to review the proposed US draft treaty prepared by the Chemical and Biological Arms Control Interdepartmental Group for a comprehensive ban on chemical weapons.

2. All agencies are agreed that the US should present a draft treaty before the Conference on Disarmament (CD) closes on 27 April. There is considerable sentiment for having the Vice President make the presentation and he apparently is agreeable. The major issue that remains to be resolved concerns the verification provision (how stringent and pervasive should the on-site inspection provision be?) contained in this agreement.

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3. You need to read  covering letter which follows this memo, as well as Tabs A & B. The rest of the material is largely background.

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4. There will be a pre-brief in preparation for this NSC at 8:30 tomorrow morning.

5. If I can do more to help in preparation for this meeting, please call.

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cc: DDCI

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United States Department of State

Washington, D.C. 20520

SECRET/NOFORNMEMORANDUM TO MR. ROBERT C. MCFARLANE  
THE WHITE HOUSE

SUBJECT: US Draft Multilateral Chemical Weapons Treaty

The Chemical and Biological Weapons (CBW) Arms Control Interdepartmental Group (IG) has developed the attached strategy paper and draft multilateral treaty for a comprehensive, worldwide ban on chemical weapons (CW). The main issue for NSC consideration at this time is how to deal with the problem of undeclared CW stockpiles and production facilities. The two options are contained respectively in the draft multilateral treaty proposal and the OSD proposal.

The Strategy

The IG has agreed on a strategy proposing US initiatives in CW arms control, in conjunction with continued emphasis on achieving the Administration's CW modernization objectives and continuing our efforts to expose and condemn the illegal uses of CW. The CW arms control initiatives we would pursue would be: (1) the US draft multilateral treaty, and (2) the special bilateral arrangements we will need to have with the Soviets in addition to those in our draft multilateral treaty.

Formal negotiation of the multilateral treaty would take place in the Geneva Conference on Disarmament (CD). This will enable us to expose publicly the flaws in the Soviets' positions, as well as to use CD support for our positions to pressure the Soviets to make concessions on verification. Bilateral negotiations with the Soviets would be pursued to reach agreement on the separate bilateral data exchanges, declarations and inspection arrangements we will need before we sign and formally accept any obligations under the multilateral treaty. Such arrangements are judged essential to enable us to test verification procedures and Soviet compliance bilaterally first.

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The strategy also provides for consultations with the Allies, US industry, and Congress in advance of tabling the initiative in the CD.

### The Treaty

The draft multilateral treaty incorporates the obligations and verification requirements in the paper on "US Detailed Views" on a CW ban that we presented to the CD last year in conjunction with the Vice President's visit to Geneva. The draft provides for a comprehensive ban on CW development, production, stockpiling, transfer, and use, as well as requires the declaration and destruction of existing CW stockpiles and production facilities. The verification provisions of the draft treaty are based on the recently completed CW Verification Study and provide for a system of declarations, mandatory and challenge on-site inspections, and monitoring sensors. OSD believes that the so-called challenge inspection provision of the draft treaty is really a voluntary provision that hinges on the consent of the suspected treaty violator.

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A review of the specific provisions in the draft treaty by the Chairmen of the Arms Control Verification Committee's (ACVC) Analysis Group called attention to the verification difficulties presented by undeclared stocks and production facilities. This review also noted that there are gaps between the object and purpose of the draft treaty and its detailed provisions. One difficulty was the exclusion of riot control

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agents and herbicides from the definition of chemical weapons, possibly permitting agents that are intended to be prohibited. It was pointed out by several members of the IG, however, that exclusion of riot control agents and herbicides was intentional and reflective of long-standing US policy. A similar question was raised concerning the feasibility of verifying intent in the case of commercial facilities which had been designed in part to be able to carry out CW-related activities as well (so-called, "dual-purpose" facilities). It was noted by several members of the IG, however, that the US objective was to make clear that the treaty also prohibited such "dual-purpose" production facilities. And it was pointed out that, while verifying intent might be difficult, if such facilities were not specifically prohibited in the treaty, they would be permitted -- something which would pose a more significant verification difficulty.

The ACVC Chairmen's memorandum also pointed out that the co-operative measures proposed in the treaty text and in the OSD proposed alternative to Article X, as well as for the special bilateral arrangements, cannot be expected to provide reliable means for detecting or deterring the production or retention of undeclared stocks and facilities. The memorandum also noted that the treaty lacks enforcement provisions other than withdrawal or resort to the UN Security Council, measures that experience indicates are of limited value for enforcing compliance.

#### Challenge Inspection

Interagency disagreement persists concerning the challenge inspection provisions.

The challenge inspection arrangement set forth in Article X of the draft treaty obligates countries to submit undeclared sites and facilities to challenge on-site inspection, "except for the most exceptional reasons." If the challenged state will not permit the inspection, it must explain why and propose a concrete alternative for resolving the complaint. If inspection is still desired, and again refused, all treaty parties and the UN Security Council would be informed promptly of the rejection so that they could take what actions they deem necessary. Countries would not, however, be permitted to refuse any challenge inspection of any declared site or facility.

OSD points out that a Soviet CW monopoly achieved through undetected (or detected but unprovable) violations of a

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CW ban would pose unacceptable military risks to the U.S. To overcome the critical deficiency in the draft treaty's verification regime -- the "low confidence" regarding hidden stocks and clandestine production -- OSD proposes an anywhere - anytime challenge inspection regime for military or government - owned or - controlled facilities. The purpose of verification is (1) to deter violations by creating a substantial risk that they would be detected and exposed, (2) in the event of a violation, to provide the evidence that would allow us to take the political decisions necessary for an appropriate response. OSD observes that the most important difference between its verification proposal and that in the draft treaty is the latter's "escape clause," which would allow a state party to reject an inspection request by invoking "exceptional circumstances." Were the U.S. to try to inspect an illegal CW stockpile in the Soviet Union, the Soviets could be counted on to use the escape clause; such a clause would vitiate the mandatory intent of any challenge inspection regime. Moreover, if the USG ever tried to use the escape clause to block a frivolous inspection request and protect a legitimate secret, the consequences would be (1) intense congressional and press attention to the facility at issue (not likely to remain secret for very long) and (2) a virtual carte blanche for the Soviets to invoke the escape clause in future without fear of public reprobation in the West. Beyond the challenge inspection controversy, OSD notes that whatever verification option is adopted the Soviets could, even while complying with the treaty, develop a "breakout" capability to allow them to produce militarily significant quantities of CW quickly. This danger would inhere in any CW ban and must be borne in mind as we formulate our negotiating positions. Finally, OSD calls attention to the likelihood that any CW ban will, over time, diminish congressional willingness to fund CW defensive (i.e., protective) programs -- thus undermining our ability to protect our troops from CW as we increase the risks of a Soviet monopoly on offensive CW capability.

ACDA, the DCI, the JCS and State do not support the OSD proposal for unimpeded access to all military or government-owned or -controlled facilities. As they did in the context of START and INF, these agencies oppose proposing an arrangement by which the US would be obligated by treaty to provide the Soviet Union, or any other state, access to our sensitive, non-CW related military or intelligence facilities simply by lodging a compliance complaint under the CW treaty. These agencies do not believe the US should table proposals it cannot itself accept, and they oppose making all government facilities liable to mandatory challenge on-site inspection.

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The key issue for decision is the choice between the challenge inspection regime proposed in the draft treaty and that proposed by OSD. The OSD proposal would require states parties to allow any inspection requested by another state party, the inspection to be performed by a multinational inspectorate in which the US would be represented. In contrast, under the draft treaty's proposed regime, challenge inspection would be initiated only after a majority of the 15-member Executive Council, in which the US would participate, agreed that the request for inspection was reasonable. Thus, while inspection would not be automatic under the draft treaty proposal, it would enable the US to avoid frivolous and unwarranted requests for inspection of US facilities and commercial plants. OSD points out that, under the draft treaty, the Soviet Union could legally reject a valid inspection request, even after an Executive Council determination of reasonableness, simply by invoking the "exceptional circumstances" clause.

Timing

All agencies believe the US should table a treaty proposal in the CD before it recesses on April 27. They further believe that, in view of his strong interest in and public association with Administration policy on CW arms control and the CW modernization program, the treaty should be tabled by the Vice President. The Vice President has expressed willingness to do so and could be available in Geneva on Tuesday, April 17 or Wednesday, April 18.

These dates are reasonable goals. Such a schedule would allow us one week before the CD recesses to brief CD members on our proposal and promote the broadest possible understanding and support for the US approach. It will also give CD delegations the necessary time to study our draft and be ready when the CD resumes in June to use it as the basis for CD negotiations this summer.

Charles Hill  
Executive Secretary

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**Attachments:**

1. Strategy Paper.
2. Draft Multilateral Treaty.
3. OSD Alternative Article X.
4. ACVC Analysis Group Chairmen's Memorandum.

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HILL/MCFARLANE MEMO FORWARDING CW TREATY PACKAGE

by: CBW Arms Control IG Working Group *delivered for*

Clearances: ACDA/MA:RMikulak *delivered for*  
CIA/ACIS   
EUR/RPM:MGuest *delivered for*  
IO/UNP:ALiebowitz *delivered for*  
JCS:COMO DSackett *delivered for*  
L/PM:MMcLeod *delivered for*  
OMB:JGriffen *delivered for*  
OSD:RPerle *delivered for*  
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